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June 23, 1997

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The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
Room 814
1919 M Street, N.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: IB Docket No. 96-220

Dear Chairman Hundt:

E-SAT, Inc. ("E-SAT"), Final Analysis, Inc. ("Final Analysis"), GE Starsys Global Positioning, Inc. ("GE Starsys"), Orbital Communications Corporation ("ORBCOMM") and Volunteers in Technical Assistance ("VITA") are writing to you to supplement the record with respect to some of the issues raised at our meeting with you on June 13, 1997. As an initial matter, we wanted to thank you once again for providing us with the opportunity to present our views on how best to resolve the pending Little LEO processing round.

As was made clear at the meeting, only two of the seven applicants support the proposed resolution put forth by the International Bureau.^{1/} The undersigned companies, in contrast, do not believe that the staff proposal presented at the meeting, which includes arbitrary elimination of some of the applicants, will best serve the public interest. We believe that there are compromise solutions that will allow all of the applicants to be licensed in a manner that fulfills their reasonable needs for spectrum even using only the limited amounts of spectrum available to Little LEOs presently.

We also believe that recent developments should be considered by the Commission in determining how best to proceed with the pending applications. At the June

^{1/} At our meeting with you, the International Bureau staff stated that its proposed Report & Order would establish only two bands for second round Little LEO systems, with only one system licensed in each band. They also proposed to dismiss the second round applications of first round licensees, ORBCOMM, VITA and GE Starsys, impose new and stricter financial qualifications criteria on remaining second round applicants and utilize auctions to resolve any remaining potential mutual exclusivity.

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13th meeting, we briefly discussed the impact on this processing round of the MobileMedia hearing.

It was not considered appropriate at that meeting, and it is not necessary here, to address the merits of that proceeding, but we do believe that its impact on the timing of this processing round is not hypothetical, but a very real concern. The Commission recently stayed the MobileMedia proceedings for up to a ten month period to permit the possible sale or restructuring of MobileMedia consistent with the Second Thursday doctrine.^{2/} Of particular relevance to this processing round was the requirement in that Order that the Bureaus not grant applications in which MobileMedia's principals have attributable interests until the issues designated in the MobileMedia proceeding are resolved as to those individuals:

We take this opportunity to reiterate that the scope of the HDO includes whether any former or current MobileMedia officers, directors and senior managers have engaged in wrongdoing. In this regard, we instruct Commission staff in all Bureaus and Offices that any radio applications in which these former or current officers, directors or senior managers have attributable interests *shall not be granted without resolution of this issue as it pertains to that individual*, either in the context of this hearing, if Second Thursday relief is ultimately not granted, or in the context of another specific application.^{3/}

Presumably this directive encompasses the application of Leo One, since the sole shareholder and identified source of capital for Leo One -- David Bayer -- was an officer and director of MobileMedia.^{4/} Thus, the Leo One application cannot be granted without first exploring the extent to which Mr. Bayer participated in what the Commission has deemed to be "unprecedented" misconduct in the MobileMedia case.

The undersigned companies are extremely concerned that adoption of the staff proposal, prior to resolution of the cloud on Leo One's legal qualifications, would result in unnecessary and irreparable harm to the interest of the public in a fully competitive and

^{2/} MobileMedia Corporation, FCC 97-197, released June 6, 1997.

^{3/} Id. at ¶ 18 (emphasis added).

^{4/} See also, NetSat 28 Company, L.L.C., DA 97-1216, released June 10, 1997, where the International Bureau modified on its own motion the NetSat 28 license to specify that the authorization is without prejudice to and is subject to the outcome of the MobileMedia investigation, in light of their discovery that David Bayer was a one-third owner of NetSat 28.

vibrant Little LEO industry. In particular, implementation of the International Bureau staff proposal prior to the resolution of Leo One's qualifications would create the realistic possibility that Leo One would be the designated licensee for one of the two new authorized systems, only to be ultimately disqualified. Alternatively, qualified applicants proposing systems that are potentially mutually exclusive with Leo One may have to wait for 10 months or more before it is clear whether or how any applicant for that system may be licensed. This certainly would be an undesirable result.

The staff's proposal would unnecessarily and unreasonably limit licensing to only two new systems out of the seven pending applications by excluding first round applicants and excluding other second round applicants. This puts the Commission in the position of having to designate entrants by regulatory fiat rather than leaving decisions concerning the right approach to this new service to the marketplace. The International Bureau's approach also would most likely result in the use of auctions to resolve mutually exclusive applications, which would have significant deleterious consequences for global mobile satellite services generally.^{5/}

We believe that these draconian measures and dire consequences are completely avoidable. Repeatedly in the course of this lengthy and complex proceeding, six of the seven second round applicants have proven capable of negotiating a comprehensive solution, and in fact, on February 24, 1997, submitted a joint plan for resolution of this proceeding. That plan, referred to as the "X/Y/Z Plan," would permit licensing of all second round applicants, including Leo One. In contrast to the staff proposal, the X/Y/Z Plan would obviate the need to exclude applicants and indeed would maximize entry into this new and innovative service. It also would eliminate the possibility of mutually exclusive applications.

However, Leo One has consistently and steadfastly opposed this solution, to the point of even refusing to engage in joint discussions with the other applicants and the FCC staff on the plan. While all the other applicants in this proceeding have willingly compromised significantly to obtain licenses to bring service quickly to the public, Leo One has refused to give one inch on its own current spectrum demands.^{6/} To a large degree, it

^{5/} Our concerns with auctions in this service are fully detailed in the record in this proceeding and include, among other things, the expectation that such an approach by the U.S. would encourage sequential auctions in individual countries for landing rights for these global services. Such a development could significantly, if not permanently, delay deployment of the constellations and the provision of low cost Little LEO services to the public.

^{6/} It should be noted that the demands that Leo One so tenaciously holds to at this point are different from those on the record in its pending application.

is the intransigence on the part of Leo One that compels the staff to put forth their plan.^{7/} Now that the Commission itself has called into question the legal qualifications of David Bayer, and therefore Leo One, it is manifestly unfair to resolve this proceeding to meet their "needs" in a way that excludes up to five other applicants and places the public interest at risk.

For these reasons, it is absolutely critical to consider fully in this proceeding the potential impact of these issues concerning the legal qualifications of Leo One before the Commission commits to a course that is opposed by most applicants and that could seriously and adversely affect the public's interest in this nascent industry. Therefore, we strongly urge abandonment of the staff proposal and the adoption instead of the X/Y/Z Plan endorsed by six of the seven applicants.^{8/} Under this approach, action on Leo One's application would be deferred until its qualifications were established, in the context of a resumed MobileMedia hearing or a separate hearing, during which time spectrum would remain for another large system that could accommodate Leo One's needs.^{9/}

^{7/} As you recall, in our meeting last Friday, Leo One asserted that it could not be licensed under the X/Y/Z Plan. Leo One's claim means no more, however, than that they believe that their business plan cannot accommodate the large system spectrum that would be made available to it under the X/Y/Z Plan. As ORBCOMM has repeatedly pointed out to the FCC staff, the demands of both domestic and international coordination in Little LEO services guarantee that all business plans must ultimately be modified. ORBCOMM itself is operating on approximately one third of the spectrum sought under its original business plan. Thus, these Leo One arguments should be given no weight. This is especially true in light of the fact that the X/Y/Z Plan expressly identifies the same spectrum availability for Leo One that it now asserts that it cannot live without, with just slightly reduced capacity.

^{8/} We believe that with the additional time this plan will provide, it will be possible to demonstrate to the Department of Defense and NOAA that there will not be any additional risk of harmful interference even if their satellite systems share with multiple Little LEO systems rather than a single system. Alternatively, other compromise band plans might be developed in the interim using Little LEO spectrum allocated at WRC-95 and WRC-97 that could accommodate the reasonable needs of all of the pending applicants, including Leo One if it is subsequently found to be legally qualified.

^{9/} Such a course of conduct is consistent with precedent. As was true in the Big Leo proceeding, deferred applications are not prejudiced if there is spectrum already assigned to accommodate them. Constellation Communications, Inc., 10 FCC Rcd 2258 (Int'l Bureau 1995); Mobile Communications Holdings, Inc., 10 FCC Rcd 2274 (Int'l Bureau 1995). In the event that under the X/Y/Z Plan Leo One is ultimately disqualified, we believe the spectrum originally set aside for them could easily be reassigned to the other licensees through negotiations.

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If Leo One ultimately were found to be qualified, it could then be awarded the license for the second large system under the X/Y/Z plan. In the meantime, however, the other applicants could be licensed, the spectrum put to use, and the public would not be prejudiced by the delays caused by the need to resolve Mr. Bayer's qualifications to be a Commission licensee as a result of his involvement with MobileMedia. The ability to license the other applicants without having to resolve the issue of Leo One's basic qualifications is a central feature that we believe strongly favors the X/Y/Z plan over the staff's proposed plan.


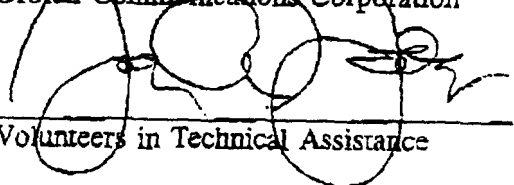
We urge you to consider these critical issues in determining how best to proceed with Little LEO licensing in light of this significant recent development. Please contact any of the undersigned if you have any questions with regard to this matter.

Sincerely,


E-SAT, Inc.


Final Analysis, Inc.


GE Starsys Global Positioning, Inc.


Orbital Communications Corporation

Volunteers in Technical Assistance

cc: Commissioner Quello
Commissioner Ness
Commissioner Chong
Parties of Record